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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8 Douglas Lee Horn,

9 Plaintiff,

10 vs.

11 Dora Schriro, et al.,

12 Defendant.

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) No. CV 04-2014-PHX-SMM (LOA)

) **ORDER**

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14 Plaintiff filed a 42 U.S.C. § 1983 action alleging that his constitutional rights were

15 violated due to deliberate indifference to his medical needs and that his rights under the

16 Americans with Disabilities Act (ADA) were violated due to the failure to provide him

17 reasonable modifications (Doc. #33). Currently pending are Plaintiff's Motion for Summary

18 Judgment, Defendants' Motions to Strike, and Plaintiff's Motion for ADA Compliance

19 (Docs. ##103, 111, 132, 180). The Court will deny all motions.

20 **I. Background**

21 Plaintiff filed an Amended Complaint setting forth two causes of action (Doc. #33).

22 Plaintiff alleged that Dora Schriro, Director of the Arizona Department of Corrections

23 (ADC), R. Pratt, Facility Health Administrator (FHA), Dr. Robert Jones, Director of Health,

24 Donald Sloan, FHA, and Drs. Eduardo Vinluan, and Jason M. Levine were deliberately

25 indifferent to his medical needs because they failed to properly diagnose and treat his visual

26 problems (Id.). Plaintiff maintained that he suffered from frequent eye infections and was

27 denied treatment to correct his double vision (Id.). Plaintiff contended that as a result of

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1 Defendants' actions, he is forced to wear an eye patch and has in effect suffered a loss of  
2 vision in his eye (Id.).

3 Plaintiff also alleged that Schriro, Deputy Warden Ramos, Larry Carter, ADA/RA  
4 Liaison, Dr. Kendall, Director of Heath, Dr. Jones, and Sloan violated the ADA by failing  
5 to provide him reasonable modifications (Doc. #33). Plaintiff asserted that he suffered from  
6 back problems, loss of vision, carpal tunnel syndrome, injuries to his knees and hip, and  
7 arthritis in his hand resulting in joint problems and weakness in his right wrist, and that he  
8 is wheelchair bound (Id.). Plaintiff maintained that he was entitled to proper bedding, a  
9 typewriter, a shower chair attached to the wall, a hose connected to the shower, and a pipe  
10 or strap located above his bed so that he can properly maneuver (Id.).

11 Plaintiff moved for summary judgment on the grounds that Defendants were  
12 deliberately indifferent to his medical needs and discriminated against him due to his  
13 disability (Doc. #103). Plaintiff requested injunctive, declaratory, compensatory, and  
14 punitive relief (Id.). Plaintiff also sought to have his sentence adjusted because he believes  
15 that due to his health issues, he has in effect received a life sentence (Doc. #104). Initially,  
16 to the extent Plaintiff seeks a modification of his sentence, a 42 U.S.C. § 1983 action is not  
17 the proper avenue to request such relief.

### 18 **I. Motion for Summary Judgment**

19 A court must grant summary judgment if the pleadings and supporting documents,  
20 viewed in the light most favorable to the non-moving party, "show that there is no genuine  
21 issue as to any material fact and that the moving party is entitled to judgment as a matter of  
22 law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).  
23 Under summary judgment practice, the moving party bears the initial responsibility of  
24 presenting the basis for its motion, and identifying those portions of the record, together with  
25 affidavits, which it believes demonstrate the absence of a genuine issue of material fact.  
26 Celotex Corp., 477 U.S. at 323.

27 Attached to Plaintiff's Motion for Summary Judgment were various inmate letters,  
28 Health Needs Request Forms, and grievances (Docs. ##95-102). Plaintiff argued that when

1 he was suffering from a severe eye infection, the prison infirmary was not staffed for four  
 2 days and he thus did not receive any treatment (Doc. #106). When Plaintiff was eventually  
 3 seen by Dr. Vinluan, Plaintiff was given antibiotics which were ineffective and he then had  
 4 to undergo two surgeries to repair the damage done his eye (Id.). Plaintiff maintained that  
 5 Dr. Levine prescribed him medication that was poison and lied about where the tube in his  
 6 eye would be placed (Doc. #104). Plaintiff also argued that Defendants denied him treatment  
 7 for his double vision (Doc. #33). Defendants moved to strike Plaintiff's motion, arguing that  
 8 he failed to properly cite to the record and that discovery had yet to be completed (Docs.  
 9 ##103, 132).

10 Plaintiff attached to his motion minimal medical records in the form of unintelligible  
 11 progress notes (Docs. ##95-102). Plaintiff's evidence does not even allow the Court to  
 12 determine his medical complaint and what occurred. Further, the record is devoid of  
 13 evidence of Plaintiff's need for specific accommodations or Defendants' action with regard  
 14 to Plaintiff's ADA complaints. Moreover, as Defendants note, discovery had not been  
 15 completed at the time of the filing (Docs. ##57, 103, 132). Accordingly, Plaintiff's Motion  
 16 for Summary Judgment will be denied as premature and Defendants' Motions to Strike will  
 17 be denied as moot. Because discovery is now closed, however, Plaintiff's Motion for  
 18 Summary Judgment will be denied without prejudice to him refiling a Motion for Summary  
 19 Judgment within thirty (30) days of the date this Order is filed.

## 20 **II. Motion for Injunctive Relief**

21 A request for injunctive relief requires that Plaintiff make a showing of "real or  
 22 immediate threat" of injury. Hodgers-Durgin v. De La Vina 199 F.3d 1037, 1042 (9th Cir.  
 23 1999) (quoting City of Los Angeles v. Lyon, 461 U.S. 95, 111 (1983)). Plaintiff is entitled  
 24 to preliminary injunctive relief only if he shows either: "'(1) a likelihood of success on the  
 25 merits and the possibility of irreparable injury, or (2) the existence of serious questions going  
 26 to the merits and the balance of hardships tipping in [the movant's] favor. These two  
 27 formulations represent two points on a sliding scale in which the required degree of  
 28 irreparable harm increases as the probability of success decreases.'" MAI Sys. Corp. v. Peak

1 Computer, Inc., 991 F.2d 511, 516-517 (9th Cir. 1993). Under either formulation of the test,  
2 the movant must demonstrate a significant threat of irreparable injury. AGCC v. Coalition  
3 for Economic Equity, 950 F.2d 1401, 1410 (9th Cir. 1991).

4 Plaintiff filed a Motion for ADA Compliance, arguing that Defendants refused to  
5 provide him reasonable accommodation under the ADA, ignored his serious medical  
6 condition with regard to his eye and pain medication, and prescribed him poison medication  
7 (Doc. #180). Plaintiff seeks to obtain a “real” mattress, a strap or pipe above his bed, a  
8 typewriter, a shower chair, and to prevent another doctor from “inserting a tube in the wrong  
9 area” in his eye (Id. at 8-9).

10 First, with regard to Plaintiff’s claim of deliberate indifference to his medical needs,  
11 Plaintiff has not demonstrated a likelihood of success on the merits because Plaintiff  
12 introduced no medical evidence in support of his claims. Moreover, Plaintiff has not  
13 demonstrated a risk of irreparable damage as he has not established that the alleged damage  
14 to his eye is progressive or that another tube is likely to be surgically inserted. And Plaintiff  
15 is no longer taking the alleged “poison medication.” Finally, Plaintiff has presented no  
16 evidence to demonstrate that the failure to surgically repair his double vision is deliberate  
17 indifference as opposed to mere negligence or sound medical opinions.

18 Second, with regard to Plaintiff’s ADA claims, Plaintiff has not demonstrated that he  
19 faces a significant risk of irreparable injury. Plaintiff requests a mattress because his back  
20 hurts, a strap in order to maneuver in the bed, a shower chair to facilitate bathing, and a  
21 typewriter because his wrist and joints hurt. However, Plaintiff has not sufficiently alleged  
22 that his back is damaged by the “sponge mattress,” that he is unable to get in and out of bed  
23 due to the lack of strap, or that he is unable to properly attend to his hygienic needs. Plaintiff  
24 merely requests items that would make his imprisonment more comfortable, but fails to  
25 demonstrate that the lack of the items results in a significant risk of irreparable injury.  
26 Further, Plaintiff’s mere inability to write a letter due to the lack of typewriter does not result  
27 in a significant risk of irreparable injury.  
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